

## Attachment A

<b>Estimated population served by MTBE contaminated drinking water</b>	
<b>State</b>	<b>Population exposed to MTBE in drinking water</b>
California	Millions
Connecticut	1,017,000
Deleware	230,000
Maine	52,000
Maryland	84,000
Massachuetts	1,352,000
New Hampshire	133,000
New Jersey	5,717,000
New York	5,868,000
Pennsylvania	3,568,000
Rhode Island	500,000
Vermont	12,000
Virginia/District of Columbia	21,000
<b>Total</b>	<b>18,554,000</b>

Source: USGS & DOI, Stephen J. Grady and George D. Casey (2001); California Department of Health Services, Drinking Water Program; and U.S. EPA data.

## Attachment B

Table E1. Chemical Properties of Selected Compounds<sup>a</sup>

	Benzene <sup>2</sup>	MTBE <sup>2</sup>	Ethanol <sup>3</sup>	ETBE <sup>1</sup>	TAME <sup>1</sup>	TBA <sup>3</sup>	Alkylates (isooctane)
Molecular Weight (g/mol)	78.11	88.2	46.1	102.2	102.2	74.1	114.2
Boiling Point (°C)	80.1	55.2	78.5	72.2	86.3	82.4	99.2
Vapor Pressure (mm Hg at 20 °C)	73	240	44	130	75	41	72
Density (g/L)	0.88	0.74	0.79	0.74	0.77	0.79	0.69
Octane Number	94	110	115	112	105	100	100
Neat Solubility (g/100g H <sub>2</sub> O)	0.178	4.8	miscible	1.2	1.2	miscible	<< 0.01
Solubility into H <sub>2</sub> O from Gasoline (g/100g H <sub>2</sub> O)	<.01	0.55	5.7 <sup>b</sup>	0.33	0.24	2.5 <sup>b</sup>	—
Taste Threshold in Water (ug/L)	500	20 to 40	—	47	128	—	—
Odor Threshold (ppm)	0.5	0.053	49	0.013	0.027	21	—

<sup>a</sup> Adapted from USGS. For a detailed discussion of the solubility in water from gasoline mixture containing 2% oxygen, see p. 2-50 - 2-53 of the National Science and Technology Council. *Interagency Assessment of Oxygenated Fuels* (June 1997).

<sup>b</sup> The water solubilities of the alcohols are estimates based on partitioning properties.

### Sources:

<sup>1</sup> D.L. Conrad, Texaco Research and Development Department, *The Impacts of Gasoline Oxygenate Releases to the Environment – A Review of the Literature* (Port Arthur, Texas, 1995).

<sup>2</sup> Donald Mackay, W.Y. Shiu, and K.C. Ma, *Illustrated Handbook of Physical-Chemical Properties and Environmental Fate for Organic Chemicals: Vol. III, Volatile Organic Compounds* (Boca Raton, FL: Lewis Publishers, Inc, 1993) p. 916.

<sup>3</sup> Donald Mackay, W.Y. Shiu, and K.C. Ma, *Illustrated Handbook of Physical-Chemical Properties and Environmental Fate for Organic Chemicals: Vol. III, Volatile Organic Compounds* (Boca Raton, FL: Lewis Publishers, Inc, 1993) p. 962.

### Key:

"—" signifies "Not Applicable."

g/mol = Grams Per Mole

°C = Degrees Celsius

mm Hg = Millimeters of Mercury

g/L = Grams Per Liter

g/100g H<sub>2</sub>O - Grams Per 100 Grams of Water

ug/L = Micrograms Per Liter

ppm = Parts Per Million

## TAB 2

### California Will Not Experience Market and Supply Volatility Under the Renewable Fuels Standard of S. 517

- There is no need to delay implementation of the renewable fuels program of S. 517 or adjust the required level of renewable fuels use.<sup>1</sup>
- Current annual ethanol use in California is approximately 100 million gallons (CEC/Stillwater).
- A recent study for the California Energy Commission concluded that, in the absence of federal legislation, a state ban on MTBE (effective 12/31/02) coupled with the existing federal reformulated gasoline (RFG) oxygen content requirement, California ethanol use would increase to 843 million gallons in 2004.
- Under S. 517, the amount of ethanol likely to be used in California is far less than would be used without the bill. With an MTBE ban, repeal of the federal RFG oxygen content requirement and a national renewable fuels standard (RFS), refiners and importers would need to use or purchase credits for 252 million gallons of ethanol in 2004, which would be California's pro rata share under the RFS.<sup>2</sup>
- The Renewable Fuels Association reports that there will be at least 2.7 billion gallons of ethanol capacity available nationwide by 2004. In contrast, the RFS only requires the use of 2.3 billion gallons. Taking into account the use of ethanol in all States under the RFS, including California's projected use of 252 million gallons, there would still be 400 million excess gallons of ethanol available in 2004.
- **These facts indicate that there would be sufficient supplies of ethanol for CA under the RFS and that there is no need to delay its implementation beyond the 2004 start date or reduce the volume of renewable fuels required. In fact, CA refiners are likely to voluntarily use more ethanol than required under the RFS.**
- Despite all these indications that there will be sufficient supplies of ethanol to meet CA's needs, S. 517 includes additional safeguards:
  - Prior to 2004, DOE is to conduct a study to determine if the RFS is likely to result in significant adverse consumer impacts in 2004. If this is determined to be the case, then EPA shall reduce the volume of the renewable fuels mandate for 2004.
  - Also, upon petition of a State or by EPA's own determination, and in consultation with DOE and USDA, EPA may waive the RFS, in whole or in part, if it determines the RFS would severely harm the economy or environment of a State, a region, or the United States or there is an inadequate domestic supply or distribution capacity to meet the requirement.

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1 The recent GAO and California Energy Commission/Stillwater reports predicted price volatility and supply shortfalls in California (CA), but these reports do not reflect the provisions in S. 517 which would repeal the federal reformulated gasoline oxygen content requirement.

2 This figure is derived by multiplying the projected 2004 CA gasoline consumption, from the CEC/Stillwater report, of 1026 thousand barrels per day, or 15.7 billion gallons per year, by the RFS standard expressed as a fraction of projected U.S. gasoline demand, or .016 (1.6%).

**TAB 3**  
**Fuels Agreement vs. Status Quo**  
**Where's the Better Deal for the Northeast?**

**The fuel provisions in S. 517** will allow for a uniform phase-down of MTBE, remove the oxygen content requirement for RFG and put in place a nationwide renewable fuels standard (RFS) that will phase-in gradually over a number of years. These provisions provide for a more orderly and cost-effective solution to the MTBE issue than state-by-state action. Because individual states are banning or are considering banning the use of MTBE, the existing federal oxygenate requirement for RFG will increase the cost of complying with these bans and lead to an inefficient pattern of fuel-type by state. The provisions in S. 517, which phase-down MTBE use and eliminate the federal RFG oxygenate requirement, provide a more balanced and efficient result. DOE/EIA and other data indicate that under S. 517 there will be sufficient supplies of ethanol available for all States, including NY. Calls for implementation delays beyond 2004, or a reduction in required renewable fuels volumes, are not supported by the data.

- With a January 2004 MTBE ban on the books in NY and a continuation of the federal RFG oxygen requirement (status quo), 184 million gallons of ethanol will be required in that year according to DOE/EIA data<sup>1</sup>.
- Under S. 517 in 2004, the amount of ethanol likely to be used in New York would be far less than what would be required under the status quo. Refiners and importers would be required to use or purchase credits for 92 million gallons of ethanol in 2004, which is NY's pro rata share under the RFS<sup>2</sup>. Actual use may be less due to the banking and trading provisions in the bill.
- The Renewable Fuels Association projects that at least 2.7 billion gallons of ethanol capacity will be available nationwide by 2004. In contrast, the RFS requires 2.3 billion gallons by 2004. This implies that there would be 400 million gallons of excess capacity available in 2004 (taking into account ethanol use in all States under the RFS, including New York's projected use of 92 million gallons).
- Despite all indications of sufficient ethanol supplies to meet NY's needs, S. 517 includes additional safeguards:
  - Prior to 2004, DOE is to conduct a study to determine if the RFS is likely to result in significant adverse consumer impacts in 2004. If this is determined to be the case, then EPA shall reduce the volume of the renewable fuels mandate for 2004.
  - Also, upon petition of a State or by EPA's own determination, and in consultation with DOE and USDA, EPA may waive the RFS, in whole or in part, if it determines the RFS would severely harm the economy or environment of a State, a region, or the United States or if there is an inadequate domestic supply or distribution capacity to meet the requirement.

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<sup>1</sup> This assumes all reformulated gasoline supplied in New York State would contain 5.7 volume % ethanol and is based on EIA *Petroleum Marketing Annual 2000* sales volumes.

<sup>2</sup> This figure is derived by multiplying the projected 2004 NY gasoline consumption, based on EIA *Petroleum Marketing Annual 2000* sales volumes, by the RFS standard expressed as a fraction of projected U.S. gasoline demand, or .016 (1.6%).

- Should other Northeast States follow the lead of NY and CT in banning MTBE, their required ethanol use would be substantially larger if S. 517 is not enacted.

Projected 2004 Ethanol Use in the Northeast (million gallons)

	Ethanol volume under RFS	Ethanol volume under Federal RFG oxygen content requirement and MTBE ban <sup>1</sup>
Connecticut	24	84
Maine	12	0
Massachusetts	43	153
New Hampshire	10	25
New Jersey	68	241
New York	92	184
Rhode Island	8	28
Vermont	5	0
Totals	261	713

Source: Based on data from EIA's *Petroleum Marketing Annual 2000*.

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<sup>1</sup> To date, Connecticut and New York have MTBE ban legislation on the books, the former to take effect on October 1, 2003, the latter on January 1, 2004. The 3<sup>rd</sup> column of the table assumes that all other Northeast States, in addition to CT and NY, ban MTBE.

## **Appendix A**

### **The House Fuels Offer Eliminates the Senate Ban of MTBE in Gasoline.**

Under the Senate bill, the use of MTBE is to be phased out in no more than four years. (See Attachment C, p. 22 and Attachment D, p.2) This language is absent from the House offer. Therefore, the only potential restrictions on MTBE use in RFG or conventional gasoline would be through the use of state enacted restriction. However, in many states these restrictions are being challenged by the MTBE industry and the courts may ultimately rule that states are preempted by the Clean Air Act Amendments of 1990 from restricting the use of MTBE.

The continued legal use of MTBE in RFG and conventional fuel creates a nightmare of uncertainty regarding the future safety of water supplies and compliance responsibilities for refiners who have limited ability to prevent contamination of non-MTBE containing fuel by supplies that legally contain MTBE. This uncertainty will continue to discourage the use of RFG in areas that are newly designated non-attainment for smog because of fears of MTBE contamination.

### **The House Fuels Offer Preempts State Prohibition of MTBE After Enactment**

The House language leaves intact Senate language that preserved state restrictions on MTBE in effect prior to enactment of these provisions but preempted state measure that go into effect subsequent to enactment. (See Attachment C, p. 25 and Attachment D, p. 4) The refiners sought this provision to provide a rational, nationwide phase out of MTBE in

fuel in lieu of multiple different state bans. Since the House offer does not ban MTBE, but does address its use, subsequent state bans would be preempted.

**The House Fuels Offer Eliminates EPA Authority to Regulate Fuel Additives to Prevent Water Contamination.**

EPA does not appear to have the authority under the existing law to regulated gasoline additives because of their adverse impact on water. The EPA has been exploring whether it has such authority under the Toxic Substances Control Act since 2000. To my knowledge, EPA is still exploring. This lack of authority is at the heart of the current controversy over MTBE use in fuel. Having removed the ban on MTBE, one might expect that a minimum response to the current MTBE crisis in the House offer might be to give EPA the authority to regulate MTBE in order to prevent water contamination. The House offer contains no such language. The House language simply strikes subsection 833(c) of the Senate compromise which contained carefully crafted language endorsed by the API authorizing EPA regulate fuel additives based on their capacity to threaten health or the environment via water pollution.(See Attachment C, p. 22 and Attachment D, p. 2)

**The House Offer Shields Refiners From Defective Product Liability Lawsuits on MTBE Brought After Enactment.**

The House language requires equivalent treatment for MTBE as is provided in the “safe harbor” in the Senate bill for renewable fuels. (See Attachment C, pp. 18-19, p. 24 and Attachment E, pp.6-7) This language would bar any future lawsuits brought under federal or state law on the basis of a MTBE being a defective product and refiners failing to warn consumers of its water contamination hazards. This prohibition would apply regardless of whether the contamination occurred prior to the enactment of the RFG provision in the Clean Air Act Amendments of 1990. The prohibition also applies regardless of whether the contamination

occurred from the presence of MTBE in conventional gasoline that is not subject to an oxygen requirement and contains MTBE solely because a refiner chose to add it to the fuel.



1                   **Subtitle A—Motor Fuels**

2   **SEC. \_\_\_\_01. SHORT TITLE.**

3           This subtitle may be cited as the “Federal Reformu-  
4   lated Fuels Act of 2002”.

5   **SEC. \_\_\_\_02. RENEWABLE CONTENT OF MOTOR VEHICLE**  
6                   **FUEL.**

7           (a) IN GENERAL.—Section 211 of the Clean Air Act  
8   (42 U.S.C. 7545) is amended—

9                   (1) by redesignating subsection (o) as sub-  
10          section (q); and

11                  (2) by inserting after subsection (n) the fol-  
12          lowing:

13          “(o) RENEWABLE FUEL PROGRAM.—

14                  “(1) DEFINITIONS.—In this section:

15                          “(A) CELLULOSIC BIOMASS ETHANOL.—

16                          The term ‘cellulosic biomass ethanol’ means  
17                          ethanol derived from any lignocellulosic or  
18                          hemicellulosic matter that is available on a re-  
19                          newable or recurring basis, including—

20                                  “(i) dedicated energy crops and trees;

21                                  “(ii) wood and wood residues;

22                                  “(iii) plants;

23                                  “(iv) grasses;

24                                  “(v) agricultural residues;

25                                  “(vi) fibers;

1       fective in design or manufacture by virtue of the fact  
2       that it is, or contains, such a renewable fuel, if it  
3       does not violate a control or prohibition imposed by  
4       the Administrator under section 211 of the Clean  
5       Air Act, as amended by this Act, and the manufac-  
6       turer is in compliance with all requests for informa-  
7       tion under section 211(b) of the Clean Air Act, as  
8       amended by this Act. In the event that the safe har-  
9       bor under this section does not apply, the existence  
10      of a design defect or manufacturing defect shall be  
11      determined under otherwise applicable law.

12           (2) **EFFECTIVE DATE.**—This subsection shall be  
13      effective as of the date of enactment and shall apply  
14      with respect to all claims filed on or after that date.

15   **SEC. \_\_\_\_ 03. MTBE TRANSITION ASSISTANCE.**

16      (a) **FINDINGS.**—Congress finds that—

17           (1) since 1979, methyl tertiary butyl ether (re-  
18      ferred to in this section as “MTBE”) has been used  
19      nationwide at low levels in gasoline to replace lead  
20      as an octane booster or anti-knocking agent;

21           (2) Public Law 101–549 (commonly known as  
22      the “Clean Air Act Amendments of 1990”) (42  
23      U.S.C. 7401 et seq.) established a fuel oxygenate  
24      standard under which reformulated gasoline must  
25      contain at least 2 percent oxygen by weight;

1           (3) at the time of the adoption of the fuel oxy-  
2       gen standard, Congress was aware that significant  
3       use of MTBE could result from the adoption of that  
4       standard, and that the use of MTBE would likely be  
5       important to the cost-effective implementation of  
6       that program;

7           (4) Congress is aware that gasoline and its  
8       component additives have leaked from storage tanks,  
9       with consequences for water quality;

10          (5) the fuel industry responded to the fuel oxy-  
11       genate standard established by Public Law 101-549  
12       by making substantial investments in—

13               (A) MTBE production capacity; and

14               (B) systems to deliver MTBE-containing  
15       gasoline to the marketplace;

16          (6) when leaked or spilled into the environment,  
17       MTBE may cause serious problems of drinking  
18       water quality;

19          (7) in recent years, MTBE has been detected in  
20       water sources throughout the United States;

21          (8) MTBE can be detected by smell and taste  
22       at low concentrations;

23          (9) while small quantities of MTBE can render  
24       water supplies unpalatable, the precise human health

1 effects of MTBE consumption at low levels are yet  
2 unknown;

3 (10) Congress has—

4 (A) reconsidered the relative value of  
5 MTBE in gasoline; and

6 (B) provided for a renewable content re-  
7 quirement for motor fuel;

8 (11) the timeline for any reduction in the use  
9 of MTBE as a fuel additive should be achieved in  
10 a manner that achieves an appropriate balance  
11 among the goals of—

12 (A) environmental protection;

13 (B) adequate energy supply; and

14 (C) reasonable fuel prices; and

15 (12) it is appropriate for Congress to provide  
16 some limited transition assistance—

17 (A) to merchant producers of MTBE who  
18 produced MTBE in response to a market cre-  
19 ated by the oxygenate requirement contained in  
20 the Clean Air Act; and

21 (B) for the purpose of mitigating any fuel  
22 supply problems that may result from any re-  
23 duction in the use of a widely-used fuel addi-  
24 tive.

1 (b) PURPOSES.—The purpose of this section is to  
2 provide assistance to merchant producers of MTBE in  
3 making the transition from producing MTBE to producing  
4 other fuel additives.

5 (c) MTBE TRANSITION ASSISTANCE.—Section  
6 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amend-  
7 ed by adding at the end the following:

8 “(5) MTBE MERCHANT PRODUCER CONVER-  
9 SION ASSISTANCE.—

10 “(A) IN GENERAL.—

11 “(i) GRANTS.—The Secretary of En-  
12 ergy, in consultation with the Adminis-  
13 trator, may make grants to merchant pro-  
14 ducers of methyl tertiary butyl ether in the  
15 United States to assist the producers in  
16 the conversion of eligible production facili-  
17 ties described in subparagraph (C) to the  
18 production of iso-octane and alkylates.

19 “(ii) DETERMINATION.—The Admin-  
20 istrator, in consultation with the Secretary  
21 of Energy, may determine that transition  
22 assistance for the production of iso-octane  
23 and alkylates is inconsistent with the pro-  
24 visions of subparagraph (B) and, on that

1 basis, may deny applications for grants au-  
2 thorized by this provision.

3 “(B) FURTHER GRANTS.—The Secretary  
4 of Energy, in consultation with the Adminis-  
5 trator, may also further make grants to mer-  
6 chant producers of MTBE in the United States  
7 to assist the producers in the conversion of eli-  
8 gible production facilities described in subpara-  
9 graph (C) to the production of such other fuel  
10 additives that, consistent with this subsection—

11 “(i) unless the Administrator deter-  
12 mines that such fuel additives may reason-  
13 ably be anticipated to endanger public  
14 health or the environment;

15 “(ii) have been registered and have  
16 been tested or are being tested in accord-  
17 ance with the requirements of this section;  
18 and

19 “(iii) will contribute to replacing gaso-  
20 line volumes lost as a result of the applica-  
21 tion of the amendments made by subtitle A  
22 of title \_\_\_\_ of the **【SAFE Act of 2002】**.

23 “(C) ELIGIBLE PRODUCTION FACILI-  
24 TIES.—A production facility shall be eligible to

1 receive a grant under this paragraph if the pro-  
2 duction facility—

3 “(i) is located in the United States;  
4 and

5 “(ii) produced methyl tertiary butyl  
6 ether for consumption in nonattainment  
7 areas at any time during the period—

8 “(I) beginning on the date of en-  
9 actment of this paragraph; and

10 “(II) ending at any time before  
11 on the effective date of the prohibition  
12 on the use of methyl tertiary butyl  
13 ether under paragraph (5)

14 “(D) EQUIVALENT LEGAL TREATMENT.—  
15 Notwithstanding any other provision of Federal  
16 or State law, MTBE shall receive equivalent  
17 legal treatment as that accorded to ‘renewable  
18 fuel’ in section \_\_\_\_02(e) of [the SAFE Act of  
19 2002].

20 “(E) AUTHORIZATION OF APPROPRIA-  
21 TIONS.—There is authorized to be appropriated  
22 to carry out this paragraph \$250,000,000 for  
23 each of fiscal years 2003 through 2005, to re-  
24 main available until expended.”.

1 (d) NO EFFECT ON LAW CONCERNING STATE AU-  
2 THORITY.—The amendment made by subsection (c) have  
3 no effect on the law in effect on the day before the date  
4 of enactment of this Act regarding the authority of States  
5 to limit the use of methyl tertiary butyl ether in motor  
6 vehicle fuel.

7 **SEC. \_\_\_\_04. ELIMINATION OF OXYGEN CONTENT REQUIRE-**  
8 **MENT FOR REFORMULATED GASOLINE.**

9 (a) **ELIMINATION.—**

10 (1) **IN GENERAL.—**Section 211(k) of the Clean  
11 Air Act (42 U.S.C. 7545(k)) is amended—

12 (A) in paragraph (2)—

13 (i) in the second sentence of subpara-  
14 graph (A), by striking “(including the oxy-  
15 gen content requirement contained in sub-  
16 paragraph (B))”;

17 (ii) by striking subparagraph (B); and

18 (iii) by redesignating subparagraphs  
19 (C) and (D) as subparagraphs (B) and  
20 (C), respectively;

21 (B) in paragraph (3)(A), by striking clause

22 (v);

23 (C) in paragraph (7)—

24 (i) in subparagraph (A)—

25 (I) by striking clause (i); and



## Attachment D

### H.R.4

#### Energy Policy Act of 2002 (Engrossed Amendment as Agreed to by Senate)

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#### **SEC. 833. AUTHORITY FOR WATER QUALITY PROTECTION FROM FUELS.**

*(a) FINDINGS- Congress finds that--*

*(1) since 1979, methyl tertiary butyl ether (referred to in this section as 'MTBE') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;*

*(2) Public Law 101-549 (commonly known as the 'Clean Air Act Amendments of 1990') (42 U.S.C. 7401 et seq.) established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight;*

*(3) at the time of the adoption of the fuel oxygen standard, Congress was aware that significant use of MTBE could result from the adoption of that standard, and that the use of MTBE would likely be important to the cost-effective implementation of that program;*

*(4) Congress is aware that gasoline and its component additives have leaked from storage tanks, with consequences for water quality;*

*(5) the fuel industry responded to the fuel oxygenate standard established by Public Law 101-549 by making substantial investments in--*

*(A) MTBE production capacity; and*

*(B) systems to deliver MTBE-containing gasoline to the marketplace;*

*(6) when leaked or spilled into the environment, MTBE may cause serious problems of drinking water quality;*

*(7) in recent years, MTBE has been detected in water sources throughout the United States;*

*(8) MTBE can be detected by smell and taste at low concentrations;*

*(9) while small quantities of MTBE can render water supplies unpalatable, the precise human health effects of MTBE consumption at low levels are yet unknown;*

*(10) in the report entitled 'Achieving Clean Air and Clean Water: The Report of the Blue Ribbon Panel on Oxygenates in Gasoline' and dated September 1999, Congress was urged--*

*(A) to eliminate the fuel oxygenate standard;*

*(B) to greatly reduce use of MTBE; and*

*(C) to maintain the environmental performance of reformulated gasoline;*

*(11) Congress has--*

*(A) reconsidered the relative value of MTBE in gasoline; and*

*(B) decided to eliminate use of MTBE as a fuel additive;*

*(12) the timeline for elimination of use of MTBE as a fuel additive must be established in a manner that achieves an appropriate balance among the goals of--*

*(A) environmental protection;*

*(B) adequate energy supply; and*

*(C) reasonable fuel prices; and*

*(13) it is appropriate for Congress to provide some limited transition assistance--*

*(A) to merchant producers of MTBE who produced MTBE in response to a market created by the oxygenate requirement contained in the Clean Air Act; and*

*(B) for the purpose of mitigating any fuel supply problems that may result from elimination of a widely-used fuel additive.*

*(b) PURPOSES- The purposes of this section are--*

*(1) to eliminate use of MTBE as a fuel oxygenate; and*

*(2) to provide assistance to merchant producers of MTBE in making the transition from producing MTBE to producing other fuel additives.*

*(c) AUTHORITY FOR WATER QUALITY PROTECTION FROM FUELS- Section 211(c) of the Clean Air Act (42 U.S.C. 7545(c)) is amended--*

*(1) in paragraph (1)(A)--*

*(A) by inserting 'fuel or fuel additive or' after 'Administrator any'; and*

*(B) by striking 'air pollution which' and inserting 'air pollution, or water pollution, that';*

*(2) in paragraph (4)(B), by inserting 'or water quality protection,' after 'emission control,'; and*

*(3) by adding at the end the following:*

*'(5) Prohibition on use of mtbe-*

*'(A) IN GENERAL- Subject to subparagraph (E), not later than 4 years after the date of enactment of this paragraph, the use of methyl tertiary butyl ether in motor vehicle fuel in any State other than a State described in subparagraph (C) is prohibited.*

*“(B) REGULATIONS- The Administrator shall promulgate regulations to effect the prohibition in subparagraph (A).*

*“(C) STATES THAT AUTHORIZE USE- A State described in this subparagraph is a State that submits to the Administrator a notice that the State authorizes use of methyl tertiary butyl ether in motor vehicle fuel sold or used in the State.*

*“(D) PUBLICATION OF NOTICE- The Administrator shall publish in the Federal Register each notice submitted by a State under subparagraph (C).*

*“(E) TRACE QUANTITIES- In carrying out subparagraph (A), the Administrator may allow trace quantities of methyl tertiary butyl ether, not to exceed 0.5 percent by volume, to be present in motor vehicle fuel in cases that the Administrator determines to be appropriate.*

*“(6) MTBE MERCHANT PRODUCER CONVERSION ASSISTANCE-*

*“(A) IN GENERAL-*

*“(i) GRANTS- The Secretary of Energy, in consultation with the Administrator, may make grants to merchant producers of methyl tertiary butyl ether in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of iso-octane and alkylates.*

*“(ii) Determination- The Administrator, in consultation with the Secretary of Energy, may determine that transition assistance for the production of iso-octane and alkylates is inconsistent with the provisions of subparagraph (B) and, on that basis, may deny applications for grants authorized by this provision.*

*“(B) FURTHER GRANTS- The Secretary of Energy, in consultation with the Administrator, may also further make grants to merchant producers of MTBE in the United States to assist the producers in the conversion of eligible production facilities described in subparagraph (C) to the production of such other fuel additives that, consistent with 211(c)--*

*“(i) unless the Administrator determines that such fuel additives may reasonably be anticipated to endanger public health or the environment;*

*“(ii) have been registered and have been tested or are being tested in accordance with the requirements of this section; and*

*“(iii) will contribute to replacing gasoline volumes lost as a result of paragraph (5).*

*“(C) Eligible production facilities- A production facility shall be eligible to receive a grant under this paragraph if the production facility--*

*“(i) is located in the United States; and*

*“(ii) produced methyl tertiary butyl ether for consumption in nonattainment areas during the period--*

*“(I) beginning on the date of enactment of this paragraph; and*

*“(II) ending on the effective date of the prohibition on the use of methyl*

*tertiary butyl ether under paragraph (5).*

*'(D) Authorization of appropriations- There is authorized to be appropriated to carry out this paragraph \$250,000,000 for each of fiscal years 2003 through 2005.'*

*(d) No Effect on Law Concerning State Authority- The amendments made by subsection (c) have no effect on the law in effect on the day before the date of enactment of this Act regarding the authority of States to limit the use of methyl tertiary butyl ether in motor vehicle fuel.*

## **SEC. 834. ELIMINATION OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.**

### ***(a) Elimination-***

*(1) In general- Section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) is amended--*

*(A) in paragraph (2)--*

*(i) in the second sentence of subparagraph (A), by striking '(including the oxygen content requirement contained in subparagraph (B))';*

*(ii) by striking subparagraph (B); and*

*(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;*

*(B) in paragraph (3)(A), by striking clause (v);*

*(C) in paragraph (7)--*

*(i) in subparagraph (A)--*

*(I) by striking clause (i); and*

*(II) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and*

*(ii) in subparagraph (C)--*

*(I) by striking clause (ii); and*

*(II) by redesignating clause (iii) as clause (ii); and*

*(2) Effective date- The amendments made by paragraph (1) take effect 270 days after the date of enactment of this Act, except that such amendments shall take effect upon enactment in any State that has received a waiver under section 209(b) of the Clean Air Act.*

*(b) Maintenance of Toxic Air Pollutant Emission Reductions- Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended--*

*(1) by striking 'Within 1 year after the enactment of the Clean Air Act Amendments of 1990,' and inserting the following:*

*'(A) In general- Not later than November 15, 1991,'; and*

## Attachment E

*Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation--*

*'(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and*

*'(bb) may renew the extension under item (aa) for two additional periods, each of which shall not exceed 1 year.*

*'(II) DEADLINE FOR ACTION ON PETITIONS- The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.'*

### *(d) SURVEY OF RENEWABLE FUEL MARKET-*

*(1) SURVEY AND REPORT- Not later than December 1, 2005, and annually thereafter, the Administrator shall--*

*(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of--*

*(i) conventional gasoline containing ethanol;*

*(ii) reformulated gasoline containing ethanol;*

*(iii) conventional gasoline containing renewable fuel; and*

*(iv) reformulated gasoline containing renewable fuel; and*

*(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).*

*(2) RECORDKEEPING AND REPORTING REQUIREMENTS- The Administrator may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator shall rely, to the extent practicable, on existing reporting and recordkeeping requirements to avoid duplicative requirements.*

*(3) APPLICABLE LAW- Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.*

### *(e) RENEWABLE FUELS SAFE HARBOR-*

*(1) IN GENERAL- Notwithstanding any other provision of federal or state law, no renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel, shall be deemed defective in design or manufacture by virtue of the fact that it is, or contains, such a renewable fuel, if it does not violate a control or prohibition imposed by the Administrator under section 211 of the Clean Air Act, as amended by this Act, and the manufacturer is in compliance with all requests for information under section 211(b) of the Clean Air Act, as amended by this Act. In the event that the safe harbor under this section does not apply, the existence of a design defect or manufacturing defect shall be determined under otherwise applicable law.*

*(2) EXCEPTIONS- This subsection shall not apply to ethers.*

(3) **EFFECTIVE DATE-** This subsection shall be effective as of the date of enactment and shall apply with respect to all claims filed on or after that date.

## **SEC. 820A. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.**

Title III of the Energy Policy Act of 1992 is amended by striking section 306 (42 U.S.C. 13215) and inserting the following:

## **SEC. 306. FEDERAL AGENCY ETHANOL-BLENDED GASOLINE AND BIODIESEL PURCHASING REQUIREMENT.**

(a) **ETHANOL-BLENDED GASOLINE-** The head of each Federal agency shall ensure that, in areas in which ethanol-blended gasoline is reasonably available at a generally competitive price, the Federal agency purchases ethanol-blended gasoline containing at least 10 percent ethanol rather than nonethanol-blended gasoline, for use in vehicles used by the agency that use gasoline.

(b) **BIODIESEL-**

(1) **DEFINITION OF BIODIESEL-** In this subsection, the term 'biodiesel' has the meaning given the term in section 312(f).

(2) **REQUIREMENT-** The head of each Federal agency shall ensure that the Federal agency purchases, for use in fueling fleet vehicles that use diesel fuel used by the Federal agency at the location at which fleet vehicles of the Federal agency are centrally fueled, in areas in which the biodiesel-blended diesel fuel described in paragraphs (A) and (B) is available at a generally competitive price--

(A) as of the date that is 5 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 2 percent biodiesel, rather than nonbiodiesel-blended diesel fuel; and

(B) as of the date that is 10 years after the date of enactment of this paragraph, biodiesel-blended diesel fuel that contains at least 20 percent biodiesel, rather than nonbiodiesel-blended diesel fuel.

(3) **REQUIREMENT OF FEDERAL LAW-** The provisions of this subsection shall not be considered a requirement of Federal law for the purposes of section 312.

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